

UNITED STATES DISTRICT COURT
IN THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONALD KINDE,

Plaintiff,

v.

BAC HOME LOANS SERVICING, L.P. fka
COUNTRYWIDE HOME LOANS, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.,
AMERICA'S WHOLESALE LENDER,

Defendants.

Case No. _____

District Judge _____

Magistrate Judge _____

Removed from:
Macomb County Circuit Court
Case No. 2012-000076-CH
Hon. James M. Biernat, Jr.

NOTICE OF REMOVAL FROM STATE COURT

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §§ 1332, 1441(a) and 1446, the above-captioned action, which is currently pending in the Circuit Court for the County of Macomb in the State of Michigan, is hereby removed by Defendants, Bank of America, N.A., successor by merger to BAC Home Loans Servicing, LP ("BANA") improperly named as BAC Home Loans Servicing, LP fka Countrywide Home Loans Servicing, LP; Mortgage Electronic Registration Systems, Inc. ("MERS"); and Countrywide Home Loans, Inc. d/b/a America's Wholesale Lender ("CHL") improperly named as America's Wholesale Lender, and collectively known as ("Defendants"), to the United States District Court for the Eastern District of Michigan, Southern Division, by the filing of this Notice of Removal with the Clerk of the United States District Court for the Eastern District of Michigan. As grounds for removal, Defendants state as follows:

1. On January 6, 2012 Plaintiff Ronald Kinde ("Kinde" or "Plaintiff") filed an action in the Circuit Court for the County of Macomb, State of Michigan, entitled *Ronald Kinde v. BAC Home Loans Servicing, L.P. fka Countrywide Home Loans, et. al.*, Case No. 12-0076-CH (the "State Court Action").

2. Defendants were served with a copy of the Summons and Complaint by hand delivery on January 13, 2012.

3. Pursuant to 28 U.S.C. § 1446(a), a complete copy of all process and pleadings served upon Defendants in the State Court Action are attached hereto as **Exhibit A**.

4. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely because it has been filed within 30 days after Defendants' receipt of the Summons and Complaint.

5. This Court is in the district and division "embracing the place where [the State Court] action is pending." 28 U.S.C. § 1441(a).

6. Defendants remove this case based upon diversity jurisdiction.

7. All Defendants consent to this Removal.

8. A copy of the written notice to Plaintiff's counsel and to the Macomb County Clerk, required by 28 U.S.C. § 1446(d), is attached as **Exhibit B** and will be filed in the State Court Action and served on Plaintiff's counsel upon the filing of this notice of removal.

DIVERSITY JURISDICTION EXISTS UNDER 28 U.S.C. § 1332

9. This action is removable pursuant to 28 U.S.C. § 1441(a), because it is a civil action over which this court has original jurisdiction under 28 U.S.C. § 1332, in that there is complete diversity between all properly joined parties, and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

All Properly Joined Parties are Diverse

10. As alleged in the Complaint, Plaintiff Ronald Kinde is a resident of Macomb County, Michigan. Complaint, ¶ 2. Therefore, Plaintiff Ronald Kinde is a citizen of the State of Michigan.

11. Defendant BANA is a national bank with its main office located in the State of North Carolina for diversity jurisdiction purposes. See Articles of Association, **Exhibit C**. See also 28 U.S.C. §§ 1332(c)(1) and §§ 1348. "[A] national bank, for § 1348 purposes, is a citizen of the State in which its main office, as set forth in its articles of association, is located." *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006). Therefore, BANA is a citizen of the State of North Carolina.

12. Defendant MERS is a Delaware corporation with its principal place of business located in the State of Virginia for diversity jurisdiction purposes.

13. Defendant CHL is a New York corporation with its principal place of business located in the State of California for diversity jurisdiction purposes.

14. There is, therefore, complete diversity of citizenship between Plaintiff and Defendants.

The Amount in Controversy Exceeds \$75,000

15. For this court to have subject matter jurisdiction based on diversity of citizenship, the amount in controversy must exceed the sum or value of \$75,000.00, exclusive of interest and costs. See L.R. 81.1(a) and (b), and 28 U.S.C. § 1332(a).

16. Plaintiff's claims for damages exceed \$75,000.00, exclusive of interest and costs because:

- (a) Plaintiff has alleged claims involving a Mortgage against the subject property which was foreclosed by Sheriff's Deed in the amount of \$119,641.46. *See Sheriff's Deed, Exhibit D.*
- (b) Although the Complaint does not plead a specific amount in controversy, Plaintiff seeks, among other things, to nullify the foreclosure of the subject property.
- (c) While Defendants deny the allegations in Plaintiff's Complaint and deny any liability to Plaintiff whatsoever, if those allegations are proven to be true, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest, costs and attorneys fees, because Plaintiff is seeking, among other things, to set aside a Sheriff's Deed in the amount of at least \$119,641.46.

17. Notwithstanding that the jurisdictional requirements have been met, nothing in this Notice of Removal should be construed as an admission that Plaintiff is entitled to any judgment in his favour.

THEREFORE, Defendants hereby remove the State Court Action from the Circuit Court for the County of Macomb, State of Michigan, to this Court, and request that the Court take jurisdiction of this civil action to the exclusion of any further proceedings in the State Court.

Respectfully submitted,

MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.

/s/ David G. Michael

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Attorneys for Defendants

Dated: February 3, 2012

CERTIFICATE OF SERVICE

I hereby certify that, on February 3, 2012, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, and that I served the paper by first class mail, United States Postal Service, on the following person:

Brian P. Parker and
Charles N. DeGryse
Law Offices of Brian P. Parker, PC
30600 Telegraph Road, Suite 1350
Bingham Farms, MI 48025

Respectfully submitted,

MADDIN, HAUSER, WARTELL, ROTH & HELLER, P.C.

/s/ David G. Michael

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